SINGAPORE REPORTS

RE CHINA UNDERWRITERS LIFE AND GENERAL INSURANCE CO. LTD.

OFFICIAL RECEIVER, HONG KONG v. KAO WEI TSENG & ORS.

[O.C.J. (Chan Sek Keong J.C.) January 19, 1988]

[Singapore – Originating Summons No. 12 of 1987]

Companies and Corporations – Winding up – Foreign liquidator seeking information pertaining to company being wound up – Whether foreign liquidator can invoke jurisdiction of court – "Liquidator" in section 377(2)(b) of Companies Act (Cap. 50, 1985 Ed.) – Meaning of – Companies Act (Cap. 50, 1985 Ed.), ss. 285, 286 & 377 – R.S.C. 1970, O.88 r.2(1) – Companies (Winding Up) Rules 1969, r. 49.

China Insurance was a company incorporated in Hong Kong. It was registered as a foreign company in Singapore. In 1981, the ownership and control of the company was acquired by the Carrian group of companies.

When the Carrian group of companies collapsed, China Insurance was wound up in Hong Kong and the plaintiff was appointed as the liquidator of the company. However, the company was not wound up in Singapore.

In the course of investigating the affairs of the company, the plaintiff discovered that two loans totalling $25 million obtained from the third defendant were used not for the benefit of China Insurance but for some other companies.

The plaintiff therefore instituted the present proceedings against the third defendant and the first defendant, who was alleged to be the deputy general manager of the third defendant at all material times. The plaintiff's application was for a court-ordered examination of the defendants under section 285 of the Companies Act.

At the hearing, the first defendant and the third defendant raised a preliminary issue that the court has no jurisdiction under section 285 of the Companies Act to order an examination as China Insurance, being a foreign company and not being wound up in Singapore, is not a company to which that section could apply. The plaintiff, however, contended that the court has jurisdiction or power under section 285 by virtue of section 377(2) of the Act.

Held, dismissing the application: (1) the argument that the expression "liquidator" in section 377(2)(b) of the Companies Act means the Official Receiver is patently unsound. The Official Receiver becomes a liquidator only when no approved liquidator is appointed in a winding up by the court. Section 377(2)(b) refers to a situation where a foreign company has not been wound up by the court in Singapore. The expression "liquidator" in section 377(2)(b) refers to the liquidator in section 377(2)(a), the appointment of whom is required to be notified to the Registrar of Companies. That liquidator is the foreign liquidator.

(2) The jurisdiction of the court in relation to the winding up of companies and unregistered companies is derived from Part X of the Act. The court has no jurisdiction under Part X in respect of corporations not wound up thereunder. It has jurisdiction over foreign companies which are wound up in their respective places of incorporation or elsewhere under Division 2 of Part XI of the Act to the extent that it is provided for therein. That this is the position is reinforced by section 350(2) which gives the court jurisdiction to exercise any powers in the case of unregistered companies wound up under Part X which might be exercised by it in winding up companies;

(3) the present application did not purport to invoke the inherent jurisdiction or power of the court to order the private or public examination of relevant persons in connection with the affairs of a company in winding up. The court does not have such jurisdiction or power. The jurisdiction or power of the court in this respect is statutory in origin and must therefore be exercised within the ambit of such legislative intent;

(4) section 285 gives to the court an extraordinary power. This power is given expressly to the court in respect of matters within its jurisdiction, *i.e.* the winding up of Singapore companies and unregistered companies; it therefore follows that it has no jurisdiction to exercise such power in respect of the affairs of the winding up of a foreign company;

(5) this court had no jurisdiction under section 285 to order the examination of persons in connection with the affairs of a foreign company which is not wound up by the court under Part X of the Act.

Cases referred to:

(1) *Re Todd Investment Pty. Ltd.* (1979) A.C.L.C. 40-585.
(2) *Re Tropical Reef Enterprises Pty. Ltd.* [1986] A.C.L.R. 413.
(3) *Felix* v. *Shiva* [1982] 3 W.L.R. 444.
(4) *Re John T. Rhodes Ltd.* 1986, Times R.R. July 12, 1986.
(5) *Re Rolls Razor Ltd. (No. 2)* [1970] 1 Ch. 576.

ORIGINATING SUMMONS.

Joseph Ang (*Tang Khin Wai* with him) for the plaintiff.

Ruth Kao for the first defendant.

T.T. Rajah (*V.K. Rajah* with him) for the third defendant.

Cur. Adv. Vult.

Chan Sek Keong J.C.: This is an application made by way of an originating summons under Order 88 rule 2(1) of the Rules of the Supreme Court ("the 1970 Rules"). It is made by the plaintiff, the Official Receiver of Hong Kong acting as liquidator of China Underwriters Life and General Insurance Co. Ltd. (In Liquidation) (hereafter called the "China Insurance"), for the exercise of the court's power under section 285 of the Companies Act (Cap. 50, 1985 Ed.) ("the Act") for the following orders:

(1) the first and second defendants may be examined on oath concerning the promotion, formation, trade dealings, affairs or property of China Underwriters Life and General Insurance Co. Ltd. (In Liquidation) ("the company") and to produce all books and papers in their custody or power relating to the company;

(2) the third defendants and/or their responsible representative/officers may be examined on oath concerning the promotion, formation, trade dealings, affairs or property of the company and to produce all books and papers in their/his custody or power relating to the company.

China Insurance was incorporated in Hong Kong on January 21, 1924. It was registered as a foreign company in Singapore on December 15, 1980 and was also registered by the Monetary Authority of Singapore under the Insurance Act (Cap. 193, 1970 Ed.) to carry on insurance business in Singapore.

In 1981, ownership and control of China Insurance was acquired by Carrian Investments Ltd. ("CIL"), a company incorporated in Hong Kong. CIL was a member of the Carrian group of companies which was controlled by one George Tan.

After CIL had acquired control of China Insurance in 1981, new directors from the Carrian group were appointed to its board of directors including (a) Jed Tan (*i.e.* the second defendant) (b) Bentley Ho (c) Kenneth Kao (d) John Marshall and (e) Rodney Bell.

Kenneth Kao was the son of the first defendant who was a deputy general manager of the third defendants until May 31, 1982 when (as alleged by the third defendants) he retired. The first defendant was also the father-in-law of George Tan, the man who headed the Carrian group. The second defendant was a brother of George Tan and a director of many companies in the Carrian Group.

At this time, China Insurance owned the whole of the 12th floor, International Plaza, Singapore 0207 which was valued at about $15,600,000. The said property was then not mortgaged or otherwise encumbered.

The Carrian group of companies collapsed in a spectacular manner in 1982 following which China Insurance was wound up on May 7, 1984 by the High Court in Hong Kong under the Companies Ordinance upon the petition of the Governor as the Insurance Authority for the purpose of the Insurance Companies Ordinance 1983 and the Official Receiver of Hong Kong was appointed the liquidator on May 9, 1984.

China Insurance has not been wound up as a foreign company in Singapore and therefore no liquidator for Singapore has been appointed by the court.

In the course of investigating the affairs of China Insurance, the plaintiff has apparently discovered that two loans totalling $25 million obtained in July 1982 by China Insurance from the third defendants have been used not for its benefit but for the benefit of other companies in the Carrian group and that the proceeds of such loans and the properties given to secure such loans (as to $9 million, by a mortgage of its property being the 12th floor of International Plaza and as to $16 million, by a pledge over its time deposit for a like amount with the third defendants) are now irrecoverable.

The plaintiff has attempted to obtain information from the third defendants as to the identities of the persons who negotiated the loans and the purpose for which the loans were taken. The third defendants have given the information requested as was within their present knowledge, as the deputy general manager who negotiated the loans has returned to China. But the plaintiff was not satisfied with the said information and has accordingly taken out this application.

The plaintiff's application is made in the belief that the directors involved in the arrangement of the loans and their subsequent diversion for use by other companies were in breach of their duties and that, given the circumstances of this case, and in particular the familial relationships of the persons alleged to have been involved in the negotiations of the loan, there was a likelihood that the officers of the third defendants had knowledge of such breaches of duty by the directors of China Insurance in misapplying its funds. The third defendants and the first defendant have denied strongly this allegation or suggestion and have also asserted they have no information or records which could assist the plaintiff in this respect.

The third defendants have produced documentary evidence that the two loans were drawn down by China Insurance on June 15, 1982 (for $16

million) and June 18, 1982 (for $9 million) through its current account and that on July 29, 1982 the overdraft in the said account had been reduced to zero. The plaintiff has not produced any further evidence on what happened after July 29, 1982 to cause the loss of the $25 million and the securities.

At the hearing before me, both counsel for the third defendants and for the first defendant raised a preliminary issue that this court has no jurisdiction or power under section 285 to make an order in terms of this application as China Insurance is not a company to which that section could apply. As this issue went to the root of the jurisdiction of the court, I decided to hear and consider it first and to defer the hearing of the application on its substance.

Section 285 of the Act provides as follows:

"(1) The court may summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the court considers capable of giving information concerning the promotion, formation, trade dealings, affairs or property of the company.

(2) The court may examine him on oath concerning the matters mentioned in subsection (1) either by word of mouth or on written interrogatories and may reduce his answers to writing and require him to sign them, and any writing so signed may be used in evidence in any legal proceedings against him.

(3) The court may require him to produce any books and papers in his custody or power relating to the company, but where he claims any lien on books or papers the production shall be without prejudice to that lien, and the court shall have jurisdiction to determine all questions relating to that lien.

(4) An examination under this section or section 286 may, if the court so directs and subject to the rules, be held before any District Judge named for the purpose by the court, and the powers of the court under this section and section 286 may be exercised by that judge.

(5) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, not having a lawful excuse made known to the court at the time of its sitting and allowed by it, the court may cause him to be apprehended and brought before the court for examination."

As section 286 is, in my view, also relevant to the determination of the scope of section 285, its relevant provisions are also reproduced below. It reads:

"286.(1) Where the liquidator has made a report under this Part stating that, in his opinion, a fraud has been committed or that any material fact has been concealed by any person in the promotion or formation of the company or by any officer in relation to the company since its formation or that any officer of the company has failed to act honestly or diligently or has been guilty of any impropriety or recklessness in relation to the affairs of the company, the court may, after consideration of the report, direct that the person or officer, or any other person who was previously an officer of the company, including any banker, solicitor or auditor, or who is known or suspected to have in his possession any property of the company or is supposed to be indebted to the company or any person whom the court considers capable of giving information concerning the promotion, formation, trade dealings, affairs or property of the company, shall attend before the court on a day appointed and be publicly examined as to the promotion or formation or the conduct of the business of the company, or in the case of an officer or former officer as to his conduct and dealings as an officer thereof.

(2) The liquidator and any creditor or contributory may take part in the examination either personally or by a solicitor.

(3) ...

(4) ...

(5) ...

(6) ...

(7) ...

(8) ..."

Sections 285 and 286 both refer to "the company" which expression is statutorily defined as a company incorporated pursuant to the Act or any previous corresponding written law ("Singapore companies"). Therefore, *ex facie*, these provisions have no application to a foreign company. However, they are enacted in Part X of the Act whose provisions deal exclusively with the winding up by the court of Singapore companies as well as "unregistered companies" (which, as defined, includes foreign companies) which have carried on business in Singapore. Section 350(2), which is in Division 5 of Part X, provides that the court and the liquidator of an unregistered company may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies. It reads as follows:

"This Division shall be in addition to, and not in derogation of, any provisions contained in this or any other written law with respect to the winding up of companies by the court and the court or the liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies."

It would therefore appear that the *prima facie* legal position is that the court may have no juris-

diction or power under sections 285 and 286 to order the examination of any person in connection with the affairs of a foreign company unless it is one which has been wound up by a court in Singapore under Division 5 of Part X of the Act.

Counsel for the plaintiff, however, contends that the court has jurisdiction or power under section 285 by virtue of section 377(2) of the Act which provides as follows:

"(2) If a foreign company goes into liquidation or is dissolved in its place of incorporation or origin –

(a) each person who immediately prior to the commencement of the liquidation proceedings was an agent shall, within one month after the commencement of the liquidation or the dissolution or within such further time as the Registrar in special circumstances allows, lodge or cause to be lodged with the Registrar notice of that fact and, when a liquidator is appointed, notice of such appointment; and

(b) the liquidator shall, until a liquidator for Singapore is duly appointed by the court, have the powers and functions of a liquidator for Singapore."

The contention is that the plaintiff as the liquidator of China Insurance is the liquidator under subsection (2)(b) and that until a liquidator for Singapore is duly appointed by the court, he has the powers and functions of a liquidator for Singapore. As such, in the exercise of such powers, he is entitled to invoke the power of the court under section 285, just as a liquidator for Singapore may do so, to assist him in the just and beneficial winding up of the affairs of China Insurance in Singapore.

Counsel for the plaintiff referred me to two decisions from two Australian state courts *viz. Re Todd Investment Pty Ltd.*[1] and *Re Tropical Reef Enterprises Pty Ltd.*,[2] in support of his contention.

The case for the first and the third defendants is that the plaintiff's application is misconceived on substantive as well as procedural grounds. The substantive grounds advanced by counsel for the third defendants are:

(1) the expression "liquidator" in section 377(2)(b) refers to the Official Receiver because section 4 defines "liquidator" to include the Official Receiver when acting as the liquidator of a corporation; that this interpretation is reinforced by section 377(3)(a) which contemplates the situation where the liquidator has to pay the net amount so recovered and realized by him to the foreign liquidator; the liquidator in that subsection therefore cannot be the foreign liquidator as it would be absurd to suggest that that subsection is a direction to a foreign liquidator to pay to himself;

(2) even if the plaintiff has the powers of a liquidator for Singapore appointed by the court, it does not follow that the court has the power to grant the relevant orders under section 285 as the powers of the liquidator have to be distinguished from those of the court;

(3) such powers and functions of a liquidator for Singapore which the plaintiff has by virtue of section 377(2)(b) are of a temporary nature and have to be exercised promptly; by reason of this undue delay, the plaintiff is in breach of section 53 of the Interpretation Act and precluded from making this application;

(4) the provisions of Division 2 Part XI of the Act (of which section 377 is one) apply only to a foreign company which "has a place of business in Singapore") (see section 365); since China Insurance no longer has a place of business in Singapore, section 377(2)(b) has no application.

The procedural ground advanced by counsel for the third defendants runs as follows:

(5) the power of the court under section 285 may only be invoked in accordance with and subject to rules of court prescribed for that purpose; the principle of law is that "if a power is given by statute, and the statute lays down the way in which that power is to be brought into existence, it must be brought into existence by that method and none other" (per Eveleigh L.J. in *Felix* v. *Shiva*[3] at p. 449). It is contended that in the present case the method has been specifically prescribed by rule 49 of the Companies (Winding Up) Rules 1969 and that the plaintiff may not bypass the procedure prescribed by rule 49 by resorting to Order 88 of the 1970 Rules, which, by Order 1 rule 2 thereof, are excluded from application to proceedings relating to the winding up of companies. Rule 49 provides as follows:

"An application to the court to summon persons for examination under section 249 of the Act shall be made *ex parte* and may be made by the liquidator or any creditor or contributory. If made by a creditor or contributory the summons and affidavit in support thereof shall be served on the liquidator."

Counsel also referred to paragraph 102/1/5 of the *1985 Supreme Court Practice* which states that Order 102 (equivalent to Order 88 of the Singapore Rules) generally applies to companies defined by the Companies Act in England and not to foreign companies.

Counsel for the first defendant made the following additional submissions:

(6) that since under section 377(1) of the Act, the Registrar has 12 months from the date of notification of cessation of business of a foreign company to remove its name from the register, the plaintiff may only exercise his temporary powers in section 377(2)(b) prior to such removal taking place; as China Insurance has been removed from the register, it was too late for the plaintiff to act under section 377(2);

(7) that by reason of section 42(3) of the Insurance Act, the Monetary Authority of Singapore must be made a party to the present proceedings; section 42 reads as follows:

> "(1) The persons who may petition under the Companies Act for the winding up of the affairs of an insurer registered under this Act, or for the continuance of the winding up of the affairs of such an insurer subject to the supervision of the court, shall include the Authority.
>
> (2) The Authority may, in accordance with the provisions of the Companies Act, present a petition for the winding up of an insurer registered under this Act if the insurer has contravened or failed to comply with any provision of the Act.
>
> (3) The Authority shall be a party to any proceedings under the Companies Act relating to the winding up of the affairs of such an insurer, and the liquidator in such a winding up shall give it such information as he may from time to time require about the affairs of the insurer."

I will now consider the arguments of counsel for both parties, beginning with those advanced by counsel for the third and first defendants.

Argument (1) that the expression "liquidator" in section 377(2)(b) means the Official Receiver is patently unsound. The Official Receiver becomes a liquidator only when no approved liquidator is appointed in a winding up by the court. Section 377(2)(b) refers to a situation where a foreign company has not been wound up by the court in Singapore. In my view, the expression "liquidator" in section 377(2)(b) refers to the liquidator in section 377(2)(a), the appointment of whom is required to be notified to the Registrar of Companies. That liquidator is the foreign liquidator.

The argument based on section 377(3)(c) is also without merit as the whole of section 377(3) regulates the duties of the liquidator of a foreign company appointed for Singapore by a court or a person exercising the powers and functions of such a liquidator. *Ex hypothesi,* that person cannot be the foreign liquidator. If and when the plaintiff as a foreign liquidator exercises such powers, he is subject to such duties. There is no absurdity in requiring a foreign liquidator, in exercising the powers and functions of a Singapore liquidator, to first pay the debts and liabilities of a foreign company in Singapore before remitting any surplus assets under paragraph (c) thereof to himself as the foreign liquidator. A foreign liquidator does not become a liquidator for Singapore simply because he is given the powers of the latter. The argument confuses status with function.

Arguments (3) and (6), which are complementary, are, in my view, not relevant to the issue whether the court has jurisdiction or power but whether it should exercise such power in the face of the plaintiff's alleged delay. I cannot see how the plaintiff can lose his legal rights to collect and recover the assets of China Insurance simply because he has been dilatory (assuming this to be the case) in carrying out his duties.

Argument (4) is not a serious argument. If section 365 were intended to apply to a foreign company which has ceased to carry on business in Singapore, it would have been unnecessary to enact section 377 and the other sections dealing with the post liquidation status of a foreign company. It is a general rule of construction that *generalibus specialibus non derogant.* If there were a conflict between section 365 and section 377, I would hold that section 377 prevails.

I do not think argument (7) is correct. Section 43(2) of the Insurance Act refers to "any proceedings under the Companies Act relating to the winding up of the affairs of such an insurer". In my view, the quoted words refer to the state of affairs contemplated by subsections (1) and (2) *i.e.* the winding up of the affairs of an insurer registered under the Insurance Act by the court under the Act. In any case, subsection (5) of section 43 of the Insurance Act makes it clear that the whole of section 43 refers to winding up of an insurer under Part X of the Act. Accordingly, I hold that

the Monetary Authority of Singapore is not a necessary party to this application.

The last argument which I do not accept is argument (5). The principle stated and applied by Eveleigh L.J. in *Felix* v. *Shiva*[3] is not relevant to this case. In that case, section 20 of the Administration of Justice Act 1969 provided that the power to make county court rules under section 102 of the County Courts Act 1959 included the power to make rules to enable such courts to make an order requiring a party to proceedings to make interim payment of such amount as may be specified in the order. No such rules had been made and accordingly it was held that the county courts had no power to make such orders. In that case, the existence of such a power was conditional upon the making of the relevant rule. This is not the case here. The power to order the examination of any person in connection with the affairs of a company exists in and is created by section 285 of the Act. Rule 49 of the Companies (Winding Up) Rules is not intended to nor does it create such power. The Companies (Winding Up) Rules bring into existence the procedures for the exercise of such power. They do not control the ambit of section 285.

Rule 49 may be relevant to the construction of section 285 to the extent that it can be shown that the Rules Committee by having made rule 49 in its existing terms have taken a view that sections 285 and 286 are applicable only to corporations wound up by court under Part X of the Act. That view will be taken into account and accorded the proper respect by this court in construing the effect of sections 285 and 286.

This brings me to argument (2) and the rival contentions of counsel for the plaintiff. I will consider first the two Australian decisions.

In *Re Todd Investment Pty. Ltd.*[1] a company incorporated in Victoria was wound up voluntarily. As the directors or shareholders of the company were resident in South Australia, the Victorian liquidator applied *ex parte* to the Supreme Court of South Australia for an order under section 249 read with sections 274(1) and 352(2) of the Companies Act 1962-79 (South Australia) (which are respectively *in pari materia* to sections 285, 310(1) and 377(2) of the Singapore Act) for the examination of the directors and for an order that they produce the books and papers in their custody and power relating to the company. The Deputy Master, who had doubts about his powers, referred the application to the judge in chambers. In a short judgment, Mitchell J. held that the Master had jurisdiction to conduct an examination under section 249. In so far as the decision was based on the combined effect of sections 249 and 352(2), no reason was given why they had such effect. In the circumstances, I propose to treat this matter as *res integra.*

In *Re Tropical Reef Enterprises Pty. Ltd. (In Liquidation)*[2] the Senior Master of the Queensland Supreme Court decided that a New South Wales liquidator could apply to a Queensland court to examine officers of the company resident in Queensland under section 541 of the Companies (Queensland) Code 1981. This decision has no relevance to the issue in the present case as section 541 is radically different from section 285, containing as it does (a) the expression "corporation" which, according to the learned Master, made it applicable to a foreign company and (b) also language therein which gives effect to a New South Wales winding up order as if it were a Queensland winding up order.

I have earlier concluded that the expression "liquidator" in section 377(2)(b) refers to the foreign liquidator. By virtue of that section, he has the powers and functions of a liquidator for Singapore until the latter is appointed by the court. A liquidator for Singapore may only be appointed when a foreign company is wound up by the court under the provisions of Division 5 of Part X of the Act.

Upon his appointment, a liquidator for Singapore has by virtue of section 350(2) all the powers and functions of a liquidator of a Singapore company under Part X of the Act. He is therefore entitled to apply for an order under section 285 of the Act and winding up rule 49 must be read to include such a liquidator. If the foreign liquidator has the same powers and duties, why may he not make such an application in the performance of his function as a liquidator for Singapore? In my view, the answer will not be found in asking the question in this form but in asking whether the court has the jurisdiction to entertain this application or the power to grant the orders applied for. The jurisdiction of the court in relation to the winding up of companies and unregistered companies is derived from Part X of the Act. The court has no jurisdiction under Part X in respect of corporations not wound up thereunder. It has jurisdiction over foreign companies which are wound up in their respective places of incorporation or else-

where under Division 2 of Part XI of the Act to the extent that it is provided for therein. That this is the position is reinforced by section 350(2) which gives the court jurisdiction to exercise any powers in the case of unregistered companies wound up under Part X which might be exercised by it in winding up companies.

The present application does not purport to invoke the inherent jurisdiction or power of the court to order the private or public examination of relevant persons in connection with the affairs of a company in winding up. The court does not have such jurisdiction or power. The jurisdiction or power of the court in this respect is statutory in origin and must therefore be exercised within the ambit of such legislative intent.

Section 285 gives to the court an extraordinary power, a power which (as said by Hoffman J. in *Re John T Rhodes Ltd.*[4]) has been described in Victorian cases in emotive language which invoked images of the Inquisition and of the Court of Star Chamber. In my view, this power is given expressly to the court in respect of matters within its jurisdiction *i.e.* the winding up of Singapore companies and unregistered companies; it therefore follows that it has no jurisdiction to exercise such power in respect of the affairs of the winding up of a foreign company not ordered by the court.

If it were otherwise, then a curious position would arise in the case of the foreign liquidator who has formed the view that a fraud has been committed by officers of the foreign company in Singapore. In such a case, the court should be able to make the appropriate orders on an application by the foreign liquidator as it would be a more serious case than that contemplated under section 285. Yet, the court would not be able to grant the order because the foreign liquidator would not be able to comply with the condition precedent of having to lodge a report under Part X (specifically under section 271 of the Act) which provision and all the other provisions in Part X imposing statutory duties on the liquidator do not apply to a foreign liquidator.

The final consideration against the interpretation advanced by counsel for the plaintiff is to be found in the antecedents of section 285. Although section 285 is immediately derived from section 249 of the Australian Companies Acts 1961, its origin was English, beginning with section 115 of the Act of 1862, section 174 of the Act of 1908, section 214 of the Act of 1929 and section 267 of the Act of 1948 (see Megarry J. in *Re Rolls Razor Ltd. (No. 2)*[5] at p. 583).

Section 115 of the Act of 1862 enabled the court to summon persons before it for examination "after it has made an order for winding up the company". Section 174(1) of the Consolidation Act of 1908 was in the same terms. Section 214(1) of the Act of 1929 changed the condition precedent to "at any time after the appointment of a provisional liquidator or the making of a winding up order" (thereby enlarging the scope of that provision to include voluntary winding up). Section 211 of the Singapore Companies Ordinance (Cap. 174, 1955 Ed.) was in exactly the same terms as section 214(1) of the Act of 1929. The Companies Act 1967 (which was based on Australian companies legislation) repealed Cap. 174 and re-enacted this provision as section 249 (and now section 285) in the present terms. There is no reason to believe that the omission of the above quoted words in section 267(1) of the Act of 1948 was made by the Australian legislatures for the purpose of bringing within its ambit foreign companies which had not been wound up by the court. A more probable reason is that the said words were thought superfluous. If it were thought expedient to give the court the requisite jurisdiction, it would have been simpler to have provided for it specifically (as was done by section 350(2) in respect of unregistered companies wound up by the court) in Division 2 of Part XI. It would appear that the Australian Companies Act 1981 has done it by substituting the word "corporation" for "company" in the relevant provision: see *Re Tropical Reef Enterprises Pty Ltd (In Liquidation).*[2]

For the reasons given above, I hold that the court has no jurisdiction under section 285 to order the examination of persons in connection with the affairs of a foreign company which is not wound up by the court under Part X of the Act.

This application is therefore dismissed with costs.

Application dismissed.

Solicitors: *Lee & Lee; Ruth Kao; Rajah & Tann.*